

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHANNON N KNAPP

Claimant

APPEAL NO. 20A-UI-04734-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAPELLO LODGING LLC

HOLIDAY INN OTTUMWA

Employer

OC: 01/05/20

Claimant: Respondent (2/R)

Iowa Code Section 96.6-2 - Timeliness of Protest

Iowa Code section 96.7(2)(a)(6) – Appeal from Statement of Charges

STATEMENT OF THE CASE:

The employer filed an appeal from the quarterly statement of charges that was mailed to the employer on May 8, 2020 and that included a charge for benefits paid to the claimant during the first quarter of 2020. After due notice was issued, a hearing was held by telephone conference call on June 17, 2020. Angie Patel represented the employer. Exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the notice of claim, of the regular benefits paid to the claimant during the first quarter to 2020 (DBRO), and of the quarterly wage reports (WAGE-A).

Claimant Shannon Knapp registered a telephone number for the hearing 13 minutes after the scheduled start of the hearing. The administrative law judge promptly added Mr. Knapp to the hearing and attempted to summarize for Mr. Knapp what had taken place in the hearing up to that point. During this process, Mr. Knapp was highly and repeatedly disruptive. The administrative law judge repeatedly requested that Mr. Knapp desist, but Mr. Knapp continued his disruptive behavior. After repeated warnings to Mr. Knapp that he would be disconnected from the call if he did not stop, the administrative law was about to disconnect Mr. Knapp from the call when Mr. Knapp hung up.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.

Whether the employer's appeal from the statement of charges was timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On January 9, 2020, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was January 21, 2020. The employer had been anticipating a claim for benefits and a notice of claim, but did not receive a notice of claim and, therefore, did not file a protest by the January 21, 2020 protest deadline. The employer had been anticipating On May 8, 2020, Iowa

Workforce Development a quarterly statement of charges to the employer that included a \$20.00 assessment to the employer's account for benefits paid to the claimant during the first quarter of 2020. This was the employer's first notice of the claim. Iowa Workforce Development had disbursed \$2,592.00 in regular benefits to the claimant during the first quarter of 2020. The employer filed an appeal from the quarterly statement of charges by email on May 20, 2020. The Appeals Bureau received the appeal from the quarterly statement of charges on May 20, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the court to be controlling on this portion of that same Iowa Code section, which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

- (2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.
 - a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.
 - b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

Iowa Administrative Code Rule 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

Iowa Code section 96.7(2)(a)(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an

administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The employer did not receive a notice of claim and, therefore, did not have a reasonable opportunity to file a protest by the January 21, 2020 protest deadline referenced on the notice of claim. The employer filed an appeal from the quarterly statement of charges 12 days after the quarter statement of charges was mailed to the employer. The employer's appeal from the quarterly statement of charges was timely. Accordingly, this matter will be remanded to the Benefits Bureau for a fact-finding interview that shall address the claimant's eligibility for benefits and the employer's liability for benefits, based on the claimant's separation from the employment. The statement of charges shall remain in effective pending the outcome of the fact-finding interview, but may be amended as appropriate, based on the outcome of the fact-finding interview.

DECISION:

The employer did not have an opportunity to file a protest in response to the January 9, 2020 notice of claim. The employer's appeal from the quarterly statement of charges mailed to the employer on May 8, 2020 was a timely appeal. This matter is remanded to the Benefits Bureau for a fact-finding interview that shall address the claimant's eligibility for benefits and the employer's liability for benefits, based on the claimant's separation from the employment. The statement of charges shall remain in effect pending the outcome of the fact-finding interview, but may be amended as appropriate, based on the outcome of the fact-finding interview.



James E. Timberland
Administrative Law Judge

June 30, 2020
Decision Dated and Mailed

jet/sam